WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-136

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. In SECTION 1 of the rule, the treatment clause refers to s. NR 46.15 (20m), while the text shows that provision as s. NR 46.15 (20e). Section NR 46.15 (20m) is the more appropriate of the two.

b. The definition of "completed management plan" is entirely substance and therefore should be placed in the text of the rule. [See s. 1.01 (7), Manual.] Terms like this should never be defined. Instead, the drafter should create a provision stating something to the effect that the department shall deem a management plan complete when specified conditions are met.

c. In the definition of "municipality," the department should strike the first "or."

d. In the definition of "certified plan writer," all of the material following "s. NR 46.165 (2)" is substance, which should be moved to the text of the rule. The definition could be stated simply as "a person certified by the department under s. NR 46.165." (If the recommendation in comment f. below is adopted, the department will be able to use a more precise reference.)

Also with regard to this definition, the rule should use one term consistently, rather than two terms interchangeably. Since there does not appear to be any need for the excessive wordiness of "plan writer certified by the department," the term "certified plan writer" should be used exclusively, in the definition and throughout the rule.

e. The rule includes far more statutory references than are necessary or appropriate. They come in two types:

Numerous provisions use statutory references where references to Administrative Code sections should be used. For example, s. 46.15 (20m) refers to "a plan required by s. 77.82 (3), Stats." It would be far more helpful to refer to the rule provision that requires the specified plan. (In this example, it is not clear what rule section that is, but see comment f., below.) Section NR 46.23 (2) is another example. In these and similar provisions of the rule, the statutory references should be replaced by references to the appropriate Administrative Code provisions. If desired, the drafter could include an explanatory note stating that, in the first example, this is the plan required by s. 77.82 (3), Stats.

Also, numerous provisions cite the statutory provision being interpreted or implemented. See, for example, ss. NR 46.165 (1) and 46.23 (5) (b). These references are superfluous; the requirements stated in the rule stand on their own. Again, if desired, the drafter could include this information in an explanatory note. See the second note following s. NR 46.18 (6) for a good example.

f. Various very important pieces of information are never stated explicitly in this subchapter, but are only implied. For example, it does not appear that the rule states that an owner of forest land may petition the department to have the land designated as managed forest land. Similarly, it appears that there is no provision that requires the preparation of management plans, although there are many provisions regarding the contents, preparation, and use of the plans. Also, there is no clear statement in s. NR 46.165 that the department shall certify plan writers and that plan writers may apply for certification. These provisions would not only make the rule easier to read, but would also facilitate referencing these requirements and provide a logical place to put notes with information about required forms. [See s. 1.09 (2), Manual.]

g. Most of the new language in the definition of "renewal," and some of the existing language is substance, which should be placed in the text of the rule. However, apart from the substantive parts, the definition does not add anything to our understanding of the term beyond what the dictionary tells us. It appears that there is no need for this definition, once the substantive portions are moved.

h. Since appropriation numbers change periodically, it may be best to omit s. NR 46.16 (1) (b) 3., to avoid the eventuality of an obsolete reference in the future. The provision is not necessary, since it only repeats a statutory requirement.

i. Section NR 46.16 (1) (c) should be incorporated into paragraphs (a) and (b), as follows:

> NR 46.16 **(1)** (a) (intro.) A petition for the designation of land as managed forest land ***or for renewal of the designation of land as managed forest land shall*** ….
>
> NR 46.16 **(1)** (b) 1. Each petition … for a new designation, ***a renewed designation*** or a conversion …. [Emphasis added.]

j. The eligibility and certification maintenance requirements and like matters referred to in s. NR 46.165 (2) (with the likely exception of training materials) are rules under the definition in s. 227.01 (13), Stats., and so should be fully developed and presented in this rule. Also see s. 227.10 (1), Stats.

k. In s. NR 46.18 (5) (c), it appears that the words "landowner or consultant forester prepared" should be stricken. The same applies to the word "Bureau" in the first note following s. NR 46.18 (6).

l. The treatment clause of SECTION 11 should read: "NR 46.18 (6) ***and notes are*** amended to read:". [Emphasis added.]

m. The treatment clause of SECTION 16 should read: "The first note following …."

n. Initial applicability and effective date provisions have different purposes. It is not necessary to have one of each applying to the same rule provision. In the case of ss. NR 46.16 (1) (a) 2. and 46.18 (5), it appears that initial applicability clauses are the correct choice. SECTION 19 should be omitted. Also, the note following s. NR 46.16 (1) (c) should be deleted.

o. SECTION 18 (1) should be written: "The treatment of s. NR 46.16 (1) (a) 2. first applies …."

p. SECTION 18 (2) states that s. NR 46.18 (5) first applies to plans that are ***started*** on or after November 1, 2005. How will the department establish definitively when work started on any given plan, and how will it respond if a landowner asserts that planning started earlier than the department believes? A safer and more standard way to address this is to apply the provision to plans ***submitted*** on or after the specified date.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section NR 46.16 (2) (e) is not a complete sentence, as the format of that subsection requires.

b. Section NR 46.165 (3) (a) should read, "… an applicant shall be …." For the greatest clarity, rules should be drafted in the singular, to the extent possible.

c. In keeping with comment 2. d., s. NR 46.18 (5) (intro.) should be written, "… prepared by a certified plan writer or by the department."

d. Section NR 46.18 (6) is very confusing. It appears that the clause following "A landowner" should be moved to follow the words "a closed or open area." This makes clear that it is the modification, not the landowner, that must be consistent with s. 77.83, Stats. Alternatively, that clause could be moved to the beginning of the sentence. However, in either option, it is still unclear what "other than" means in this sentence.

e. In s. NR 46.19, what do "an entire legal description" and "within a legal description" mean? In particular, how do they differ from "an entire parcel"?

f. In the note following s. NR 46.19, a closing parenthesis is missing from the citation.

g. In s. NR 46.23 (4) (a) (intro.), "submitted by the transferee" is superfluous. Also, "all of the following" should be inserted before the colon. Similarly, in s. NR 46.16 (1) (a) (intro.), "as follows:" should replace "in accordance with this subsection." Since s. NR 46.165 (3) (intro.) is not actually introductory material, it should be renumbered sub. (3) (a) and the subsequent paragraphs should be pars. (b) to (d).